

PUBLIC SCHOOL CONCESSIONS
Except from Proposed AH 260, General Exemptions
ALTERNATIVE LANGUAGE

| No. | PAGE/LINE REFERENCE | SOURCE | PROPOSED LANGUAGE | SBE STAFF POSITION |
|-----|------------------------|--|---|---|
| 1 | 1 22 | San Diego County Counsel's Office (De Lorrell) | <p>Revise sentence and footnote: However, the courts have also concluded that "such incidental use must be directly connected with, essential to, and in furtherance of, the primary use <u>and must be reasonably necessary for the accomplishment of the primary purpose for which the tax-exempt institution was organized.</u>"²</p> <p>² <i>Cedars of Lebanon v. County of Los Angeles</i> (1950) 35 Cal.2d 729, 736; <i>Honeywell Information Systems v. County of Sonoma</i> (1974) 44 Cal.App.3d 23, 28; See also <i>Cedars of Lebanon v. County of Los Angeles</i> (1950) 35 Cal.2d.729, 736.</p> | Accepted—See page 2, line 18, of attached document. |
| 2 | 1 26 | San Diego County Counsel's Office (De Lorrell) | <p>Revise paragraph: Court cases have given public schools fairly wide discretion as to what held that "used exclusively for educational purposes" includes any property that is considered necessary to fulfill the functions of a complete, modern college or university.³ As such, presumption may be made that those taxable possessory interests located on a campus fulfill a necessary function of the public school by virtue of their location, and, conversely, that those located off campus do not fulfill a necessary school function. However, these presumptions can be overcome. Therefore, the The county assessor must examine the facts and circumstances for each taxable possessory interest to determine eligibility for the public school exemption. <u>One of the many factors that the assessor may consider is whether a taxable possessory interest is located on or off campus. Upon examination, even a taxable possessory interest located on campus may not be eligible for the exemption depending on how the property is used.</u></p> | Accepted—See page 2, line 21, of attached document. |
| 3 | 2 3 | California Assessors' Association (Dear) | <p>Comment: An increasing number of government jurisdictions levee direct charges even if a parcel is exempted to zero value. It would be helpful to elaborate on the difference between a property that is non taxable by constitutional provision, versus property that has been exempted from tax based on ownership and use.</p> | See page 3, line 11, of attached document. This issue is discussed in detail in the Public Schools Chapter of AH 260. |
| 4 | 2 3 | California Assessors' Association (Dear) | <p>Comment: It would be helpful to include a narrative describing the claiming process if a lessee has use of property owned by a school, including method to validate an exclusive use test.</p> | See page 2, line 30, and page 3, line 11. |
| 5 | — — | SBE Staff | <p>Comment: We cite Revenue and Taxation Code section 202.6 which doesn't seem to include state universities or the University of California. Are there any statutes that would extend a similar rationale for exemption to these entities?</p> | Accepted—See page 1, line 9, of attached document |

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| 6 | 2 | 15 | San Diego County Counsel's Office (De Lorrell) | <p>Revise bullets:</p> <ul style="list-style-type: none"> • <u>The governing body of the school authorized the student organization to sell food in vending machines on school premises.</u> • The vending machine dispenses items that can be classified as food. • <u>Access to the machines is limited to the student body and faculty.</u> • The student body organization receives a portion of the receipts from the vending machine service. | <p>Accepted—See page 4, line 4, of attached document.</p> <p>Not accepted—does not have to be used <i>solely</i></p> |
| 7 | 3 | 6 | San Diego County Counsel's Office (De Lorrell) | <p>Comment: When the facility is used by the general public and not for a use related to education, such as a means of generating revenue for the school and the facility competes with the property of other business owners, the facility would not be considered exempt regardless of whether the facility is located on campus.</p> <p>Revise sentence: Typically, there is little confusion as to the exempt nature of property associated with residence dining halls, on-campus eateries, or snack bars <u>not used by the general public.</u></p> | Not accepted—does not have to be used <i>solely</i> |
| 8 | 3 | 10 | San Diego County Counsel's Office (De Lorrell) | <p>Comment: Whether the property is exclusively used depends on an examination of the facts of a particular case. There isn't a bright line test depending on location.</p> <p>Revise sentence: However, since <u>if</u> such property normally is used exclusively for public schools, it is exempt from property taxation under article XIII, section 3(d) of the Constitution.</p> | Accepted—See page 4, line 30, of attached document. |
| 9 | 3 | 14 | San Diego County Counsel's Office (De Lorrell) | <p>Comment: Whether the property is exclusively used depends on an examination of the facts of a particular case. There isn't a bright line test depending on location. See <i>Honeywell Information Systems v. County of Sonoma</i> (1974) 44 Cal.App.3d 23, 29-30.</p> <p>Revise paragraph: Private non-profit or for-profit concessionaires—such as fast food restaurants, coffee shops, or individually owned food stands—are <u>may be</u> eligible for exemption as long as they are located on the campus. On-campus sites may include areas such as recreational facilities, dining halls, or food courts. <u>However, on-campus sites used by the general public that compete with off-campus business owners or are used as a means of generating revenue for the school would not be exempt. An indication of possible non-exempt use would be where a private concessionaire provides unrestricted food service when the school already provides food service restricted to students and faculty.</u> Concessionaires that are on public school-owned property that is located off campus are generally not eligible for the exemption.⁸</p> | Not accepted—does not have to be used <i>solely</i> |

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| 10 | 3 | 16 | SBE Staff | Comment: It would be useful to define "campus," since we draw a bright line for exemption purposes between on- and off-campus operations that are otherwise identical. | Accepted—See page 2, line 5, of attached document. |
| 11 | 3 | 19 | San Diego County Counsel's Office (De Lorrell) | Comment: This implies that all of the following are exempt although a factual analysis is necessary. Revise Section Title: Other Exempt Possessory Interests | See page 5, line 13, of the attached document. |
| 12 | 3 | 19 | California Assessors' Association (Dear) | Comment: Draft text addressing food service property is a primary focus. Some additional text for clarification would be helpful for other property, such as travel agencies, sporting good stores and full service banks. | See page 6, line 25, of the attached document. |
| 13 | 3 | 19 | Yolo County Assessor (Butler) | Comment: Add a discussion regarding pubs that sell alcoholic beverages on CSU and UC campuses. | See page 5, line 2, of attached document. |
| 14 | 3 | 19 | California Assessors' Association (Dear) | Comment: The addition of text discussing unrelated business income would be helpful. Is the test applied to property other than student book stores? | See page 5, line 30, of attached document. |
| 15 | 3 | 27 | San Diego County Counsel's Office (De Lorrell) | Comment: Vending machines will not always be exempt. Revise sentence: However, similar to the possible exempt status of vending machines, the taxable possessory interest in the real property may also be exempt as property used exclusively for public school purposes (article XIII, section 3(d) of the California Constitution; Revenue and Taxation Code section 202(a)(3)). | Accepted—See page 5, line 20, of attached document. |
| 16 | 3 | 34 | San Diego County Counsel's Office (De Lorrell) | Comment: This language creates a conclusive presumption that does not exist. The taxpayer has the burden of satisfying the provisions to qualify for an exemption. A "bookstore" or portion thereof may not qualify for the exemption if part of it is used for a non-qualifying purpose. Revise sentence: Bookstore property is deemed to be used exclusively for public school purposes, and, thus, is exempt from possessory interest taxation, regardless of the for-profit status of the owner. | Accepted—See page 5, line 27, of attached document. |
| 17 | 4 | 9 | San Diego County Counsel's Office (De Lorrell) | Revise sentence: Land leased from a public university by a master lessee is exempt from possessory interest taxation if the apartments to be developed on the land are to be used for student housing, regardless of the for-profit nature of the lessee. | Accepted—See page 6, line 11, of the attached document. |
| 18 | 4 | 24 | San Diego County Counsel's Office (De Lorrell) | Revise bullet: <ul style="list-style-type: none"> Is used <u>exclusively</u> for public school purposes. | Accepted—See page 6, line 24, of the attached document |

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| 19 | 5 | 3 | San Diego County Counsel's Office (De Lorrell) | Revise sentence: Although it can be argued that such businesses in close proximity to the campus provide conveniences to the students and that a large percentage of the business is generated from the students, such establishments are not exclusively used for public school purposes <u>because they are accessible to the general public and compete with other business owners.</u> | Not accepted—does not have to be used <i>solely</i> |

2 **PUBLIC SCHOOL CONCESSIONS**

3 **GENERAL PROVISIONS**

4 Article XIII, section 3, of the California Constitution provides:

5 The following are exempt from property taxation:

6 ...(d) Property used for libraries and museums that are free and open to the public
7 and property used exclusively for public schools, community colleges, state
8 colleges, and state universities.

9 The Court of Appeals in *Regents of University of California v. State Board of Equalization*¹ held
10 that when referring to article XIII, section 3, and public educational institutions:

11 We discern in the provisions of article XIII, section 3, a purpose to grant
12 exemption from the ad valorem tax of property used by any public educational
13 institution, a purpose which may be accomplished simply by interpreting "state
14 universities" literally; that is, to mean *all* of the public universities, including the
15 University of California.

16 Further, Revenue and Taxation Code section 202 provides:

17 (a) The exemption of the following property is as specified in subdivisions (a),
18 (b), (d) and (h) of Section 3 of Article XIII of the Constitution...

19 (3) Property used exclusively for public schools, community colleges, state
20 colleges, and state universities, including the University of California.

21 **DEFINITION OF POSSESSORY INTERESTS**

22 A taxable possessory interest may be created when a lease, contract, permit, or other government
23 authorization allows a private right to the possession and use of publicly owned real property for
24 a period of time. Under most circumstances, there are no taxable possessory interests in personal
25 property.² Like other taxable property, possessory interests may be eligible for exemption,
26 depending upon their use. Taxable possessory interests may qualify for the public school
27 exemption if the property is used exclusively for public school purposes. Where a taxable
28 possessory interest is included in the following discussions, it is assumed that the property in
29 question meets the criteria of a taxable possessory interest in that the possession of, claim to, or
30 right to the possession of the property is:

¹ (1977) 73 Cal.App.3d 660, 668.

² Revenue and Taxation Code section 201.5 provides that a taxable possessory interest exists in property owned by the California Pollution Control Financing Authority, whether real or personal.

1. Independent,
2. Durable,
3. Exclusive of rights held by others, and
4. Provides a private benefit to the possessor.

DEFINITION OF CAMPUS

For purposes of identifying public school concessionaires, campus means the primary school location or auxiliary branch of a university, college, or public school where students are taught, but not incidental locations. For example, some medical students may be required to obtain training in their medical specialties by becoming residents at private clinics located off campus. Under this scenario, the student-teacher relationship alone would not qualify the private clinics as a part of the campus nor for the public school exemption.

QUALIFYING AS A PUBLIC SCHOOL CONCESSIONAIRE

The criterion for whether the public school exemption is available is that the taxable possessory interest must be used exclusively for a public school use. The courts have held that the term *used exclusively* does not mean that the property exempted must be used *solely* for the purposes stated, to the exclusion of any other uses. The property may also be used for certain types of incidental uses as well. However, the courts have also concluded that "such incidental use must be directly connected with, essential to, and in furtherance of, the primary use and must be reasonably necessary for the accomplishment of the primary purpose for which the tax-exempt institution was organized."³

~~Court cases have given public schools fairly wide discretion as to what~~ held that "used exclusively for educational purposes" includes any property that is considered necessary to fulfill the functions of a complete, modern college or university.⁴ ~~As such, presumption may be made that those taxable possessory interests located on a campus fulfill a necessary function of the public school by virtue of their location, and, conversely, that those located off campus do not fulfill a necessary school function. However, these presumptions can be overcome. Therefore, the~~ The county assessor must examine the facts and circumstances for each taxable possessory interest to determine eligibility for the public school exemption. Factors that the county assessor should consider include, but are not limited to:

- Is the taxable possessory interest used exclusively for educational purposes?—keeping in mind that *used exclusively* does not mean *used solely*.
- Is the taxable possessory interest located on or off campus? Generally, taxable possessory interests located off campus do not fulfill a necessary school function. However, upon

³ *Cedars of Lebanon v. County of Los Angeles* (1950) 35 Cal.2d 729, 736; *Honeywell Information Systems v. County of Sonoma* (1974) 44 Cal.App.3d 23, 28; see also *Cedars of Lebanon v. County of Los Angeles* (1950) 35 Cal.2d 729, 736.

⁴ *Mann v. County of Alameda* (1978) 85 Cal.App.3d 505, 508.

1 examination, even a taxable possessory interest located on campus may not be eligible for the
2 exemption depending on how the property is used.

- 3 • Is the taxable possessory interest used for the benefit and convenience of the students and
4 faculty?—again, keeping in mind that used for the *benefit and convenience of the students*
5 and faculty does not mean used *solely*.
- 6 • Is access to the taxable possessory interest restricted functionally or physically? Does the
7 location of the taxable possessory interest on the school property make it less likely for the
8 general public to use?
- 9 • Is the primary purpose of the taxable possessory interest just to generate income for the
10 concessionaire?

11 **EXEMPTION PROCESS**

12 It is incumbent upon the possessor of a taxable possessory interest to provide information to the
13 county assessor to show why the property should be exempt from property taxation under the
14 public school exemption.

15 When a county assessor determines that a taxable possessory interest meets the qualifications for
16 the public school exemption, then two possible methods of exemption exist:

- 17 1. If the taxable possessory interest is located on public school-owned property, then the
18 property is exempted pursuant to article XIII, section 3, of the California Constitution. No
19 claim form is required. The county assessor is not required to value the property and
20 place it on the roll before exempting it.
- 21 2. If privately owned property is used exclusively for educational purposes, then the
22 property is exempted pursuant to Revenue and Taxation Code section 254.⁵ An annual
23 affidavit claiming the exemption is required. The county assessor is required to value the
24 property and place it on the roll before exempting it.

25 **VENDING MACHINES**

26 Public school officials have historically contracted with profit-making vending machine
27 companies to put their machines on school grounds or campuses whereby the school will benefit
28 from a portion of the sales. The vending machines are easily movable and generally are classified
29 as personal property. Pursuant to ~~Revenue and Taxation Code~~ section 202.6, personal property is
30 exempt if it is used exclusively in the performance of activities by a student body organization
31 authorized by sections 76060 et seq. of the Education Code.

⁵ All section references are to the Revenue and Taxation Code unless otherwise designated.

One of the activities authorized by the Education Code is a student body organization selling food on school grounds.⁶ Consequently, vending machines located on public school property are themselves eligible for the public school exemption under the following circumstances:

- The governing body of the school authorized the student organization to sell food in vending machines on school premises.
- The vending machine dispenses items that can be classified as food.
- The student body organization receives a portion of the receipts from the vending machine service.

In addition, the public school exemption provisions contained in section 202(a)(3)⁷ allows for the exemption of any property used exclusively for a public school, regardless of ownership. Therefore, vending machines owned by a for-profit business are eligible for the exemption as long as the property is being used by public schools. (See below for a discussion regarding the taxable possessory interest created in the public school real property upon which vending machines sit.)

The Education Code authorizes school districts to furnish food service. Therefore, vending machines dispensing food items are a service that is directly related to, and in furtherance of, a primary purpose of the school district. Furthermore, the court in *California School Employees Assoc. v. Sequoia Union High. School Dis.*⁸ held that providing food to students in secondary schools is an educational activity within the provisions of the Education Code. Thus, such vending machines are exempt from taxation.

PRIVATE FOOD CONCESSIONAIRES

Real and personal property used for low-cost food facilities that primarily serve students and faculty and are operated by a school, an auxiliary nonprofit corporation, or a student body organization are exempt. Typically, there is little confusion as to the exempt nature of property associated with residence dining halls, on-campus eateries, or snack bars.

Further, it is not uncommon for private concessionaires to have contracts with public schools, community colleges, state colleges, state universities, and the University of California to provide food service to students on school properties. A taxable possessory interest may be created when such concessionaires occupy and/or lease space on public school property. However, ~~since~~ if such property ~~normally~~ is used exclusively for public schools, it is exempt from property taxation under article XIII, section 3(d) of the Constitution. This constitutional provision does not require that the public school own the property, only that the property is exclusively used for public school purposes.

⁶ Education Code section 48931.

⁷ For ease of reference in this manual, we may refer to subdivisions as, for example, section 202(a)(3).

⁸ *California School Employees Assoc. v. Sequoia Union High. School Dis.* (1969) 272 Cal.App.2d 98.

1 Private non-profit or for-profit concessionaires—such as fast food restaurants, coffee shops,
2 pubs, or individually owned food stands—are eligible for exemption as long as they are located
3 on the campus. On-campus sites may include areas such as recreational facilities, dining halls, or
4 food courts. When determining eligibility of food concessionaires, the county assessor should,
5 among other factors, consider the physical access to the property. For example, is the fast food
6 restaurant located on the edge of a campus where it is easily accessed by the general public, or is
7 it located on a part of the campus that would make it less likely to be used by the general public;
8 for instance, no parking is available. Because of statutory provisions and case law precedence, it
9 is less difficult for on-campus food concessionaires to qualify for the public school exemption
10 than most other types of concessionaires.

11 Concessionaires that are on public school-owned property that is located off campus are
12 generally not eligible for the exemption.⁹

13 **OTHER ~~EXEMPT~~ POSSESSORY INTERESTS THAT MAY QUALIFY FOR EXEMPTION**

14 Other examples of taxable possessory interests that may be eligible for the public school
15 exemption include:

- 16 • ***Real Property Occupied by Vending Machines***—Where vending machines are exempt from
17 personal property taxation when used for public school purposes, the county assessor should
18 also look at the actual physical location of the vending machines on the public school
19 property. If the vending machine is located on property owned by the public school, then
20 taxable possessory interests may be created. However, similar to the possible exempt status
21 of vending machines, the taxable possessory interest in the real property may also be exempt
22 as property used exclusively for public school purposes (article XIII, section 3(d) of the
23 California Constitution; Revenue and Taxation Code section 202(a)(3)).
- 24 • ***Bookstores***—Leases of retail space located on public university campuses for bookstores
25 where the patrons are primarily students, faculty, and staff of the college typically are
26 exempt. Such bookstores generally sell items such as course textbooks, student supplies, and
27 occasionally personal computers. Bookstore property ~~is deemed to be~~ used exclusively for
28 public school purposes, ~~and, thus,~~ is exempt from possessory interest taxation, regardless of
29 the for-profit status of the owner.

30 However, section 202(c) provides, in part:

31 ...a property tax under this division shall be imposed upon that portion of the
32 bookstore property determined to be generating the unrelated business taxable
33 income...to the extent property is:

34 ...(2) Is primarily devoted to bookstore use that produces income that is taxable
35 as unrelated business taxable income.

⁹ Education Code section 48931.

1
2 • ***Student Housing Leasehold Interest***—Students' and faculty's leasehold interests in
3 apartments or other housing owned by a public school are exempt. In *Mann v. County of*
4 *Alameda*,¹⁰ the court ruled that public university-owned housing available to full-time
5 students who are married, or full-time single students with children, is property used
6 exclusively for public school purposes. Such housing furthers the primary educational
7 purposes of a university or college and is considered property that is reasonably necessary for
8 the fulfillment of a generally recognized function of a complete modern college or
9 university.¹¹

10 • ***Land and Improvements for Student Housing***—Land leased from a public university by a
11 master lessee is exempt from possessory interest taxation if the apartments ~~to be~~ developed
12 on the land are ~~to be~~ used for student housing, regardless of the for-profit nature of the lessee.
13 In such a situation, taxable possessory interests also may be created on the lessee's interest in
14 the government-owned improvements because the improvements constitute taxable
15 improvements on tax-exempt land. Nonetheless, if used for student housing, the taxable
16 possessory interest will be exempt from property taxation. Further, if the sublease of an
17 individual unit in an apartment project creates a taxable possessory interest,¹² all possessory
18 interests in this scenario still may be exempt as property used exclusively for the public
19 university within the meaning of article XIII, section 3(d) of the California Constitution.

20 In determining whether or not a lessee qualifies for the public school exemption on its
21 possessory interest, the ~~key determination is~~ primary determinants are that it:

- 22 • Provides a convenience to the students and faculty;
23 • Is located on public school property; and
24 • Is used exclusively for public school purposes.

25 The public school exemption may be eligible to food concessionaires, ATM machines,
26 bookstores, student housing, etc. However, today's campuses frequently have a myriad of
27 concessions that present a county assessor with more difficult challenges in determining
28 eligibility for the public school exemption. Concessions such as travel agencies, full-service
29 banks, sporting stores, and beauty salons are less likely to qualify. However, determinations must
30 be made on a case-by-case basis. For instance, a campus that has a cosmetology program may
31 require a beauty salon for student training.

¹⁰ *Mann v. County of Alameda*, *supra*.

¹¹ *Connolly v. County of Orange* (1992) 1 Cal.4th 1105, 1127, where the California Supreme Court held that housing privately owned, as distinguished from here where the students and faculty leased from the university, are not considered to be exclusively used for the benefit of the school.

¹² This assumes that the sublease is for a period greater than half of the remaining term of the master lease.

POSSESSORY INTERESTS NOT EXEMPT

Public school districts, community colleges, state colleges, state universities, and the University of California may also own property located off school premises or campuses. When such property is leased to others and is used in a manner that is not exclusively for public school purposes, the possessory interest is taxable.

Examples of taxable possessory interests include:

- ***Off-Campus Businesses***—Restaurants or other food services and retail stores that lease property owned by a public school, but are located off campus, are subject to possessory interest taxation. Although it can be argued that such businesses in close proximity to the campus provide conveniences to the students and that a large percentage of the business is generated from the students, such establishments are not exclusively used for public school purposes.
- ***Privately Owned Residences***—A lessee of a public university property that uses the property as a site for a privately owned residence creates a taxable possessory interest. In *Connolly v. County of Orange*,¹³ the California Supreme Court considered the case of faculty members and employees of the University of California who built their privately owned homes on land owned by the university. The Supreme Court held that such use of university property does not fulfill the public purpose contemplated by article XIII, section 3(d) of the California Constitution, and that granting a tax exemption to a faculty member's private long-term leasehold interest would clearly extend the constitutional provision exemption beyond its intended reach.

In denying the exemption, the court stated that if the faculty's leasehold interests in the property on which the privately owned homes were situated were entitled to an exemption merely because the homes were being used for faculty housing, then there would never be a basis to deny an exemption to the faculty member's property interest in the homes themselves, which would be beyond the scope of the constitutional exemption. In other words, if the use of property for faculty housing is an exclusive use of property for public school purposes under section 3(d) of the California Constitution, then even a faculty member who bought a home on private land and used it as his or her family residence could also claim an entitlement to an exemption because that property too would be property used for faculty housing.
- ***Leased Unimproved Land***—When a school district (lessor) leases its tax-exempt unimproved land to a corporation (lessee), even when the corporation is a public facilities corporation solely owned by the district, a taxable possessory interest may be created that is assessable to the lessee.¹⁴

¹³ *Connolly et al, v. County of Orange, supra*.

¹⁴ *City of Desert Hot Springs v. County of Riverside* (1979) 91 Cal.App.3d 441.

- 1 • If such a public facilities corporation subsequently subleases the unimproved land back to
2 the tax-exempt school district, then such a leaseback to the lessor does not affect the
3 lessee's taxable possessory interest because, after the sublease, the lessee would still have
4 constructive possession. *Constructive possession* is when "a person, although he is not in
5 actual possession of land or improvements, has a right to possession and no person
6 occupies the property in opposition to such right."¹⁵ The courts have held that the
7 sublessee's lease is pursuant to, and subordinate to, the rights of the lessee.
- 8 • If the public facilities corporation acquires unimproved property and leases it to a tax-
9 exempt school district, even if the term is in excess of 35 years, the property is taxable
10 and cannot be exempt as property owned by the school district. An exception occurs
11 when property that is owned by the public facilities corporation (or any other private
12 person or entity) is leased to a school district and then used for public school purposes. In
13 this instance, the property would be eligible for the public school exemption.

¹⁵ *City of Desert Hot Springs v. County of Riverside, supra.*